Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

TAHIR S. RAZVI,
Petitioner

v.

GUARANTEE LIFE INSURANCE COMPANY

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit Cause No. 00-20839

PETITION FOR WRIT OF CERTIORARI

ALDEN D. HOLFORD
Counsel of Record
7515 Kensico Road
Houston, Texas 77036
(713) 772 0977

QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit Court of Appeals erroneously affirmed the District Court's granting of summary judgment for Appellee Guarantee Life Insurance Company.

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STATEMENT OF JURISDICTION

(i) The Fifth Circuit Court of Appeals entered its Judgment on May 10, 2001.

(ii) None

(iii) Not applicable

(iv) This Honorable Court has jurisdiction of this Petition under 28 U.S.C. §1254 (1)

(v) Not applicable

AUTHORITIES APPLICABLE

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories,and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Fed. R. Civ. Proc. 56(c), Third Sentence.

"(a) Persons empowered to bring a civil action

A civil action may be brought-

(1) by a participant or beneficiary

(B) to recover benefits due him under the terms of his plan ..."

Employee Retirement Income Security Act 29 U.S.C. §1132(a)(1)(B)

STATEMENT OF THE CASE

On June 18, 1999, Tahir Razvi's boss, knowing how sick he was, required him to go on vacation until August 6, 1999, when he was to be and was laid off (CR #10, para.2, 3). On June 30, 1999, while onrequired vacation, he was declared totally disabled by his doctor (Appendix, Document Five). See also the Payroll Authorization Record, which states "Effective date 8-6-99" for the "Reduction of Force" (Appendix, Document Six). Tahir Razvi applied for Long Term Disability on July 1, 1999 (Appendix, Document Seven).

The basis of Jurisdiction for the District Court was 28 U.S.C. §1331.

ARGUMENT

The Fifth Circuit Court of Appeals stated as grounds for its Judgment that "... and affirm for essentially the same reasons stated by the district court." (Appendix, first document, page 2). The District Judge's Memorandum and Order is at Appendix, second document, and its Judgment is at Appendix, third document.

The District Court erroneously sustained (Appendix, second document, pages 5-6) Guarantee Life's Objections(C.R. #28) to Plaintiff's Affidavit (C.R. #22), and its Objections (C.R. #45) to Plaintiff's Third Affidavit (C.R. #40). Plaintiff's replies to Guarantee Life's objections are at C.R. ## 34, 48, except that Petitioner believes that the District Court was correct that S&B's employees' statements were not party-opponent admissions as to Guarantee Life, but Petitioner still submits that the sustained objections should be reversed. Petitioner adds (to C.R. #48) that Fed. R. Civ. E. 804(a)(5),(b)(3) excepts Mr. Haden's statement to Petitioner, related in Petitioner's Third Affidavit (CR #40), paragraph 3, "Not you," (as to his benefits terminating on June 19, 1999), and Petitioner's statements (dealt with in C.R. #40) that he

personally heard the statements he recites. And Petitioner's statement that it was Ms. Lunday's writing on the Long Term Disability Form when she handed it to Petitioner, in paragraph 4, was permitted under Fed. R. Civ. E. 701. The District Court erroneously affirmed Appellee's determination that Petitioner's employment with S&B ended on June 18, 1999. The District Court misconstrued the Payroll Authorization Record (Appendix, Document Six) and the Notice of COBRA Eligibility (Appendix, Document Eight) (not objected to, C.R. #45), and misapplied the Exit Interview Form (Appendix, Document Nine) ("last day worked," not last day of employment.) Petitioner urges this Court to analyze these documents. And in Petitioner's Third Affidavit, C.R.#40, Petitioner states that he personally heard the statements "On June 18, my boss ... instructed me to take vacation until August 6, 1999 when I was to be, and was, laid off.", and Mr. Haden's statement to him, "Not you," (as to his benefits terminating on June 19, 1999), and Mr. Thompson's statement to him that "your payroll check stubs would be legal documents showing that you are still on the S&B payroll until August 6, 1999"

(Petitioner's pay stubs while he was on vacation until August 6,1999, are at C.R. #22, Exhibit B, starting at page 188), and Ms. Dobbi Lunday's statement, after Tahir Razvi's June 30, 1999 determination of total and permanent disability, that he "was still on the S&B payroll." The District Court misapplied the definition of "Actively at Work" to Petitioner's situation of being declared totally and permanently disabled while on required vacation. Defendant Guarantee Life's Response to Plaintiff's Motion for Summary Judgment (C.R. # 30), Exhibit A (pp. 353-327), is Guarantee Life's Certificate of Group Insurance. The definition for "Actively at Work" is at page 3, the first definition:

> ACTIVE WORK or ACTIVELY AT WORK means an Employee's full-time performance of all customary duties of such Employee's occupation at:
>
> 1. the Employer's usual place of business or
> 2. Any other business location to which the Employer requires the Employee to travel.

The District Court, based on this definition, decided that Tahir Razvi was not "Actively at Work" when he was and, while vacation, declared totally and permanently disabled. (C.R. #49,

pages 8-9). However, it is required of the District Judge, that when the contract has been drafted totally by one party, to construe "most strongly" any ambiguities in the relevant contractual language against that party. United States v. Seckinger, 397 U.S.203, 210-211, (1970). Petitioner respectfully points out, that the proper construction of the "Actively at Work" definition depends on whether the District Judge construes "all customary duties of such Employee's occupation" to mean his occupation when he was working, or to mean his occupation at the time he was declared totally and permanently disabled, and "any other business location to which the Employer requires the Employee to travel" is limited to locations where the Employee is actually working, or includes any location where the Employer requires the Employee to travel, where for the Employer's business, that place is the usual place where the Employee goes at the requirement of the Employer. In each case, Petitioner respectfully submits, either construction of the language fits the definition of "Actively at Work," so the constructions favoring Petitioner, the latter ones, should have been the ones the District Judge

employed in her decision. The District Judge must also employ for her decision all facts put in evidence by Petitioner that are uncontradicted by Appellee's or the other Defendant's evidence. Petitioner pled, Appendix, Document Four, and put in unobjected-to affidavit (CR# 22), that he was required by his boss to go on vacation, and that while on vacation he didn't do any work, he only rested, that was "all customary duties" of an Employee while on vacation. There is, therefore, "evidence on which the jury could reasonably find for the plaintiff." Appendix, second document, page 4. "B. Summary Judgment Standard".

PRAYER

WHEREFORE, Petitioner prays that this Honorable Court will grant Petitioner's Petition for Writ of Certiorari.

Respectfully Submitted,

Alden D. Holford
Counsel of Record
State Bar No. 09834400
7515 Kensico Road
Houston, Texas 77036
(713) 772 0977